

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/RULING/2018/2
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2017/AR/6)

Date : 5.2.2018

Name and address of the applicant	:	M/s. Shree Vishwakarma Engineering Works 10/11, Narsinhnagar, Near Swastik Industries Char Rasta, Amraiwadi, Ahmedabad – 380 026.
GSTIN of the applicant	:	24ADRPA5324R1Z6
Date of application	:	24.08.2017 / 07.10.2017
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a) classification of any goods or services or both;
Date of Personal Hearing	:	15.11.2017
Present for the applicant	:	Shri N.N. Patel, Advocate

The applicant M/s. Shree Vishwakarma Engineering Works is engaged in the assembling and manufacturing of musical instruments known as electrically operated drum with bell and zalar. The applicant has submitted that they are purchasing various components for assembling of musical instrument. The applicant had installed lathe machine, drill machine and welding machine which are mainly used for preparing body and machining work. Thereafter, different parts are manually assembled. Accordingly, as per applicant, the use of machine is only for preparing body. The main activity of assembling instrument is done manually. The instrument is popularly known as ‘electrically operated drum with bell and zalar’ and is mainly used in temple during morning and evening prayer in the form of Aarti.

2. The applicant submitted that the ‘electrically operated drum with bell and zalar’ was exempted from tax under the Gujarat Sales Tax Act, 1969 vide Determination Order dated 26.02.1990 given in the case of M/s. Jagdish Industries, reported at 1989/D/144. Subsequently, the said instrument was held as covered under entry 43 of Schedule I of the VAT Act vide Determination Order dated 31.05.2013 passed under section 80 in the case of the applicant. Accordingly, it was exempted from tax even under the VAT Act. The relevant entry 43 under the VAT Act was as under.

“Entry 43 – Musical instruments (handmade and other than electronic musical instruments) and harmonium reeds”

3. The applicant submitted that the Chapter 92 of GST Tariff provides musical instruments, parts and accessories of such articles. The Chapter 92 provides various kinds of musical instruments which are subject to tax under the GST Act. The Chapter 92 also provides the ‘Indigenous handmade musical instrument’ subject to NIL rate of GST. They submitted that the entry of musical instrument under the VAT Act and as provided

under Chapter 92 of the GST Act are identical and hence according to them the exemption granted under the VAT Act is continued even under the Goods and Service Tax Act, 2017. They requested that the disputed item known as electrically operated drum with bell and zalar be held as covered under Chapter 92 of the GST Tariff applicable at NIL rate of tax.

4. The applicant made further written submissions in support of their claim of classification of the item electrically operated drum with bell and zalar as an indigenous handmade musical instrument. They submitted that the Chapter 92 of GST Tariff provides for musical instruments, parts and accessories of such articles subject to tax @ 28%, which includes Central Tax @ 14% and State Tax @ 14%. However, the NIL rate of tax is applicable to indigenous handmade musical instrument. Thus, the NIL rate of tax is applicable in case where the musical instrument is indigenous and is handmade musical instrument. Accordingly, the instrument should be a musical instrument, should be handmade and indigenous. If all these three conditions are fulfilled then the NIL rate of tax is applicable.

5. It is submitted by the applicant that normally in every Hindu Temple, during morning and evening Aarti, Drum and Zalar is played by a person with the help of small wooden stick. The instrument of the applicant, which is combination of drum and zalar, is played by using electric power during morning and evening Aarti. It creates rhythm during performing of Aarti. Accordingly, as per meaning given in Wikipedia – Encyclopedia, Musical Instrument means – “A musical instrument is an instrument created or adapted to make musical sound. In principle any object that produces sound can be consider a musical instrument. It is through purpose that the object becomes a musical instrument”. Accordingly, the disputed item manufactured by the applicant is musical instrument as covered under Chapter 92 of the GST Tariff.

6. The applicant submitted that the second requirement is that the musical instrument should be indigenous. The term indigenous as defined in Cambridge Advance Dictionary means “Naturally existing in a place of country rather than arriving from another place”. Further, as per Oxford Dictionary, indigenous means “originating or occurring naturally in a particular place; native”. The disputed item ‘electrically operated drum with bell and zalar’ is manufactured by the applicant at his place of business. Accordingly, the item manufactured by the applicant is an indigenous musical instrument.

7. The applicant submitted that the third requirement is that the musical instrument should have been handmade. They submitted that the body for installing drum and zalar is manufactured with the help of machine. The further process of assembling drum and zalar and other component is done manually. Accordingly, the main process of assembling of instrument is done manually. The Hon’ble Supreme Court in the case of Collector of Central Excise V/s. Louis Shoppe & Another, 102 STC Pare 129 while interpreting the item as handicraft product has held that “it must be predominantly made by hand. It does not matter if some machinery is also used in the process”. Accordingly, the disputed item of the applicant is handmade musical instrument.

8. It is submitted by the applicant that the item electrically operated drum with bell and zalar is an indigenous handmade musical instrument covered under Chapter 92 subject to NIL rate of tax. They submitted that there is a principle for interpretation of schedule entry that under which entry the product is covered is to be determined by following the test of common parlance or commercial parlance and relied on the judgment of Hon’ble Supreme Court in the case of M/s. Indo International Industries, reported at 45 STC Page 359. They submitted that the disputed item of the applicant is

popularly known as musical instrument and is also played in every Hindu Temple during performing morning and evening Aarti. Accordingly, as per common parlance principle, the disputed item is indigenous handmade musical instrument and hence the rate of tax applicable would be NIL rate of tax. They further relied on the following judgments

- (a) Atul Glass Industries (p) Ltd. – 63 STC Page 322 (S.C.)
- (b) Indian Aluminium Cables Ltd. - 64 STC Page 180 (S.C.)
- (c) Alpine Industries, - 131 STC Page 9 (S.C.)

9. The applicant further submitted that the Government of India, Ministry of Finance (Department of Revenue), vide Notification No. 28/2017-Central Tax (Rate) dated 29.09.2017 had provided list of indigenous handmade musical instrument in Annexure II in which the item No. 4 is relating to GETCHU VADYAM or JHALLARI. Further, item 43 is also related to GETHU or JHALLARI. According to the applicant, the item No. 4 and 43 is related to zalar. Further item No. 113 is related to NAGARA – pair of KETTLEDRUMS. According to the applicant, the disputed instrument is consisting of zalar and nagara and hence they are covered by item No. 4, 43 and 117 of the list and hence NIL rate of tax is applicable to it.

10. We have considered the submissions made by the applicant in their application for advance ruling and additional written submissions as well as submissions made at the time of personal hearing.

11. The issue involved in this case is regarding (i) appropriate classification of the product ‘Electrically operated Drum with Bell and Zalar’; and (ii) whether the said product is eligible for exemption vide Sl. No. 143 of Notification No. 2/2017-Central Tax (Rate), dated 28-6-2017 issued under the Central Goods and Services Tax Act, 2017 and corresponding Notification issued under the Gujarat Goods and Services Tax Act, 2017, which provided exemption to ‘Indigenous handmade musical instruments’ of Chapter 92.

12.1 It is observed that the Explanation (iii) and (iv) of the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 provides as follows :-

“Explanation. - For the purposes of this notification, -

(i)

(ii)

(iii) “Tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.”

12.2 Further, Hon’ble Supreme Court in the case of L.M.L. Ltd. Vs. Commissioner of Customs [Civil Appeal No. 3764 of 2003, decided on 21.09.2010 reported at 2010 (258) ELT 321 (S.C.)] has held as follows :-

“12. In Collector of Central Excise, Shillong v. Wood Crafts Products Ltd. reported in (1995) 3 SCC 454, it was held by this Court that as expressly stated in the statements of objects and reasons of the Central Excise Tariff Act, 1985, the Central Excise Tariffs are based on the Harmonious System of Nomenclature

(HSN) and the internationally accepted nomenclature was taken into account to reduce disputes on account of tariff classification. Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the Harmonious System of Nomenclature (HSN). Although, the decision in the case of Woodcraft Products (supra) dealt with the interpretation of the provisions of the Central Excise Tariff there can be no doubt that the HSN Explanatory Notes are a dependable guide even while interpreting the Customs Tariff.”

13.1 As per the submissions of the applicant, for manufacture of product ‘Electrically operated Drum with Bell and Zalar’, they prepare body by using Lathe Machine, Drill Machine and Welding Machine, wherein different parts are manually assembled. In the said product, Drum, Bell and Zalar are used which are played in a rhythm by mechanical operation of electric motor run by electricity. The resultant product is distinctly known in the market as ‘Electrically operated Drum with Bell and Zalar’.

13.2 The description of goods covered by Heading 9208 of the First Schedule to the Customs Tariff Act, 1975, is as follows :-

“Musical boxes, fairground organs, mechanical street organs, mechanical singing birds, musical saws and other musical instruments not falling within any other heading of this Chapter; decoy calls of all kinds; whistles, call horns and other mouth-blown sound signaling instruments”

13.3 The product manufactured by the applicant is distinctly known in the market as ‘Electrically operated Drum with Bell and Zalar’ and the Drum, Bell and Zalar used in the said product are played in a rhythm by mechanical operation of electric motor run by electricity. We, therefore find that the said product is appropriately classifiable under Heading 9208 of the First Schedule to the Customs Tariff Act, 1975, which *inter-alia* covers the products musical boxes, fairground organs, mechanical street organs, mechanical singing birds, musical saws and other musical instruments not falling within any other heading of Chapter 92.

14.1 Sl. No. 143 of Notification No. 2/2017-Central Tax (Rate), dated 28-6-2017 issued under the Central Goods and Services Tax Act, 2017 and corresponding Notification issued under the Gujarat Goods and Services Tax Act, 2017, provided exemption to ‘Indigenous handmade musical instruments’ of Chapter 92. The said Notification No. 2/2017-Central Tax (Rate), dated 28-6-2017 was amended vide Notification No. 28/2017-Central Tax (Rate), dated 22.09.2017, whereby, *inter-alia*, in Sl. No. 143, entry “Indigenous handmade musical instruments as listed in ANNEXURE II”, has been substituted and ‘Annexure – II’ containing list of 134 indigenous handmade musical instruments, was inserted. Thus, the exemption vide Sl. No. 143 of the said Notification is now admissible only to those indigenous handmade musical instruments of Chapter 92 as are listed in Annexure-II of the said Notification.

14.2 As per the submissions of the applicant, for manufacture of product ‘Electrically operated Drum with Bell and Zalar’, they prepare body by using Lathe Machine, Drill Machine and Welding Machine, wherein different parts are manually assembled. In the said product, Drum, Bell and Zalar are used which are played in a rhythm by using electricity and electric motor. The resultant product is distinctly known in the market as ‘Electrically operated Drum with Bell and Zalar’. We, therefore find that the said product do not correspond to the description ‘Getchu Vadyam or Jhallari’ mentioned at Sr. 4 or ‘Gethu or Jhallari’ mentioned at Sr. 43, or ‘Nagara – pair of Kettledrums’ mentioned at Sr. 113 of Annexure – II of Notification No. 2/2017-Central Tax (Rate), dated 28-6-2017, as amended, as claimed by the applicant, or to any other items of said Annexure – II. As

the list of indigenous handmade musical instruments given in Annexure-II of Notification No. 2/2017-Central Tax (Rate) is exhaustive and the wordings of Entry at Sl. No. 143 of said Notification are very clear, we hold that the benefit of Sl. No. 143 of Notification No. 2/2017-Central Tax (Rate), dated 28-6-2017 is not admissible to the product 'Electrically operated Drum with Bell and Zalar' manufactured and supplied by the applicant.

14.3 We also note that Sl. No. 143 of Notification No. 2/2017-Central Tax (Rate), dated 28-6-2017, as amended, is not *pari-materia* to Entry 43 under the Gujarat VAT Act. Therefore, the Determination Order issued in respect of Entry 43 of the Gujarat VAT Act, is not found to be applicable in the present case.

15. In view of the foregoing, we rule as under :-

RULING

- (i) The product 'Electrically operated Drum with Bell and Zalar' manufactured and supplied by the applicant is classifiable under Heading 9208 of the First Schedule to the Customs Tariff Act, 1975.
- (ii) The product 'Electrically operated Drum with Bell and Zalar' of the applicant is not eligible for exemption provided vide Sl. No. 143 of Notification No. 2/2017-Central Tax (Rate), dated 28-6-2017, as amended, issued under the Central Goods and Services Tax Act, 2017 and corresponding Notification issued under the Gujarat Goods and Services Tax Act, 2017.

(R.B. Mankodi)
Member

(G.C. Jain)
Member

Place : Ahmedabad
Date : 5.2.2018.